

Senate Amendment 3170

PAG LIN

1 1 Amend Senate File 520 as follows:
1 2 #1. Page 1, by inserting before line 1 the
1 3 following:
1 4 <Section 1. Section 714.16, subsection 2,
1 5 paragraph a, unnumbered paragraph 4, Code 2007, is
1 6 amended by striking the paragraph.>
1 7 #2. Page 1, by inserting after line 17 the
1 8 following:
1 9 <____. "Puffery" means a statement that
1 10 exaggerates, blusters, or boasts, but upon which no
1 11 reasonable consumer would rely when purchasing a
1 12 product.>
1 13 #3. Page 2, line 2, by inserting after the figure
1 14 <2> the following: <, paragraphs "b" through "d" and
1 15 "f" through "n".>
1 16 #4. Page 2, by striking lines 22 and 23 and
1 17 inserting the following:
1 18 <c. Conduct that constitutes puffery.
1 19 d. Insurance companies subject to Title XIII.
1 20 e. A hospital licensed pursuant to chapter 135B.
1 21 f. A health care facility licensed pursuant to
1 22 chapter 135C.
1 23 g. Federally insured depository institutions.
1 24 h. An individual licensed, certified, or
1 25 registered under chapter 148, 150, 150A, 151, 153,
1 26 154, 155, or 155A, while engaged in the practice of
1 27 the profession for which the individual is licensed,
1 28 certified, or registered and while acting in
1 29 compliance with the laws, rules, and regulations
1 30 applicable to the respective profession.
1 31 i. An attorney licensed to practice law in this
1 32 state while engaged in the practice of that profession
1 33 and while acting in compliance with the laws, rules,
1 34 and regulations applicable to the legal profession.
1 35 j. An individual licensed, certified, or
1 36 registered under chapter 522B, 542, 542B, 543B, 544A,
1 37 544B, or 544C, while engaged in the practice of that
1 38 profession for which the individual is licensed,
1 39 certified, or registered and while acting in
1 40 compliance with the laws, rules, and regulations
1 41 applicable to the respective profession.>
1 42 #5. Page 2, line 31, by striking the word <five>
1 43 and inserting the following: <eight>.
1 44 #6. Page 3, by striking lines 6 through 11 and
1 45 inserting the following:
1 46 <1. A consumer who suffers an ascertainable loss
1 47 of money or property, real or personal, as the result
1 48 of a prohibited practice in violation of this chapter
1 49 may bring an action at law to recover actual economic
1 50 damages. The court may order>.
2 1 #7. Page 4, line 6, by inserting after the word
2 2 <finds> the following: <by a preponderance of clear,
2 3 convincing, and satisfactory evidence>.
2 4 #8. Page 4, line 9, by inserting after the word
2 5 <actual> the following: <economic>.
2 6 #9. Page 4, line 10, by inserting after the word
2 7 <actual> the following: <economic>.
2 8 #10. Page 5, line 19, by inserting before the word
2 9 <In> the following: <1.>
2 10 #11. Page 5, by inserting after line 26 the
2 11 following:
2 12 <2. Each plaintiff seeking to serve as a
2 13 representative party on behalf of a class shall
2 14 provide a sworn certification personally signed by
2 15 such plaintiff and filed with the petition that does
2 16 all of the following:
2 17 a. States that the plaintiff has reviewed the
2 18 petition and has authorized the filing of the
2 19 petition.
2 20 b. States that the plaintiff did not purchase the
2 21 merchandise that is the subject of the petition at the
2 22 direction of plaintiff's counsel or in order to
2 23 participate in any private action arising under this
2 24 chapter.

2 25 c. States that the plaintiff is willing to serve
2 26 as a representative party on behalf of a class
2 27 including providing testimony at deposition and trial,
2 28 if necessary.

2 29 d. Identifies any other action under this chapter
2 30 filed during the three-year period preceding the date
2 31 on which the certification is signed by the plaintiff
2 32 in which the plaintiff has sought to serve as a
2 33 representative party on behalf of a class.

2 34 3. The certification filed pursuant to subsection
2 35 2 shall not be construed to be a waiver of the
2 36 attorney-client privilege.

2 37 4. a. Not later than twenty days after the date
2 38 on which the petition is filed, the plaintiff or
2 39 plaintiffs shall cause to be published, in a newspaper
2 40 of general circulation in the county in which the
2 41 petition is filed, a notice advising members of the
2 42 purported class of all of the following:

2 43 (1) Of the pendency of the action, the claims
2 44 asserted therein, and the purported class period.

2 45 (2) That not later than sixty days after the date
2 46 on which the notice is published any member of the
2 47 purported class may move the court to appoint the
2 48 member to serve as lead plaintiff of the purported
2 49 class.

2 50 b. If more than one action on behalf of a class
3 1 asserting substantially the same claim or claims
3 2 arising under this chapter is filed, only the
3 3 plaintiff or plaintiffs in the first filed action
3 4 shall be required to cause notice to be published in
3 5 accordance with paragraph "a".

3 6 c. Any notices required by this subsection shall
3 7 be in addition to any notice required pursuant to the
3 8 rules of civil procedure.

3 9 5. a. Not later than ninety days after the date
3 10 on which a notice is published under subsection 4, the
3 11 court shall consider any motion made by a purported
3 12 class member in response to the notice, including any
3 13 motion by a class member who is not individually named
3 14 as a plaintiff in the petition or petitions, and shall
3 15 appoint as lead plaintiff the member or members of the
3 16 purported plaintiff class the court determines to be
3 17 most capable of adequately representing the interests
3 18 of class members, who shall be known as the most
3 19 adequate plaintiff.

3 20 b. If more than one action on behalf of a class
3 21 asserting substantially the same claim or claims
3 22 arising under this chapter has been filed and any
3 23 party has sought to consolidate those actions for
3 24 pretrial purposes or for trial, the court shall not
3 25 make a determination of the most adequate plaintiff
3 26 until after the decision on the motion to consolidate
3 27 is rendered. As soon as practicable after such
3 28 decision is rendered, the court shall appoint the most
3 29 adequate plaintiff as lead plaintiff for the
3 30 consolidated actions in accordance with this
3 31 paragraph.

3 32 c. (1) The court shall adopt a presumption that
3 33 the most adequate plaintiff in any private action
3 34 arising under this chapter is the person or group of
3 35 persons that meets all of the following requirements:

3 36 (a) Has either filed the petition or made a motion
3 37 in response to a notice required pursuant to
3 38 subsection 4.

3 39 (b) In the determination of the court, has the
3 40 largest financial interest in the relief sought by the
3 41 class.

3 42 (c) Otherwise satisfies the requirements of the
3 43 rules of civil procedure relating to class actions.

3 44 (2) The presumption regarding the most adequate
3 45 plaintiff described in subparagraph (1) may be
3 46 rebutted only upon proof by a member of the purported
3 47 plaintiff class of one of the following:

3 48 (a) The presumptively most adequate plaintiff will
3 49 not fairly and adequately protect the interests of the
3 50 class.

4 1 (b) The presumptively most adequate plaintiff is
4 2 subject to unique defenses that render such plaintiff
4 3 incapable of adequately representing the class.

4 4 d. For purposes of this subsection, discovery
4 5 relating to whether a member or members of the

4 6 purported plaintiff class is the most adequate
4 7 plaintiff may be conducted by a plaintiff only if the
4 8 plaintiff first demonstrates a reasonable basis for a
4 9 finding that the presumptively most adequate plaintiff
4 10 is incapable of adequately representing the class.
4 11 e. The most adequate plaintiff shall, subject to
4 12 the approval of the court, select and retain counsel
4 13 to represent the class.
4 14 6. Except as the court may otherwise permit,
4 15 consistent with the purposes of this section, a person
4 16 who files a class action under this section may be a
4 17 lead plaintiff or an officer, director, or fiduciary
4 18 of a lead plaintiff, in no more than five class
4 19 actions brought as plaintiff class actions pursuant to
4 20 the federal or Iowa rules of civil procedure during
4 21 any three-year period.
4 22 7. Total attorney fees and expenses awarded by the
4 23 court to counsel for the plaintiff class shall not
4 24 exceed a reasonable percentage of the amount of any
4 25 damages and prejudgment interest actually paid to the
4 26 class.
4 27 8. Any proposed or final settlement agreement that
4 28 is published or otherwise disseminated to the class
4 29 shall include each of the following statements along
4 30 with a cover page summarizing the information
4 31 contained in such statements:
4 32 a. If reasonably subject to determination, the
4 33 amount of the settlement proposed to be distributed to
4 34 the parties to the action determined in the aggregate
4 35 and on an average per share basis. If the settlement
4 36 amount or average settlement amount per share to be
4 37 disclosed pursuant to this subsection is not
4 38 reasonably subject to determination at the time of the
4 39 publication or dissemination of the proposed or final
4 40 settlement agreement, the method by which the
4 41 settlement amount or average settlement amount per
4 42 share will be determined.
4 43 b. (1) If the settling parties agree on the
4 44 average settlement amount per share that would be
4 45 recoverable if the plaintiff prevailed on each claim
4 46 alleged under this chapter, a statement concerning the
4 47 average settlement amount per share.
4 48 (2) If the parties do not agree on the average
4 49 settlement amount per share that would be recoverable
4 50 if the plaintiff prevailed on each claim alleged under
5 1 this chapter, a statement from each settling party
5 2 concerning the issue or issues on which the parties
5 3 disagree.
5 4 c. If any of the settling parties or their counsel
5 5 intend to apply to the court for an award of attorney
5 6 fees or costs from any fund established as part of the
5 7 settlement, a statement indicating which parties or
5 8 counsel intend to make such an application, the amount
5 9 of fees and costs that will be sought including the
5 10 amount of such fees and costs determined on an average
5 11 per share basis, and a brief explanation supporting
5 12 the fees and costs sought. Such information shall be
5 13 clearly summarized on the cover page of any notice to
5 14 a party of any proposed or final settlement agreement.
5 15 d. The name, telephone number, and address of one
5 16 or more representatives of counsel for the plaintiff
5 17 class who will be reasonably available to answer
5 18 questions from class members concerning any matter
5 19 contained in any notice of settlement published or
5 20 otherwise disseminated to the class.
5 21 e. A brief statement explaining the reasons why
5 22 the parties are proposing the settlement.
5 23 f. Such other information as may be required by
5 24 the court.
5 25 9. In any private action arising under this
5 26 chapter that is certified as a class action pursuant
5 27 to the rules of civil procedure, the court may require
5 28 an undertaking from the attorneys for the plaintiff
5 29 class, the plaintiff class, or both, or from the
5 30 attorneys for the defendant, the defendant, or both,
5 31 in such proportions and at such times as the court
5 32 determines are just and equitable, for the payment of
5 33 fees and expenses that may be awarded under this
5 34 section.
5 35 10. This section applies to each action arising
5 36 under this chapter that is brought as a class action

5 37 pursuant to the rules of civil procedure.>
5 38 [#12](#). Title page, line 1, by striking the word
5 39 <creating> and inserting the following: <relating to
5 40 consumer frauds including the creation of>.
5 41 [#13](#). By renumbering as necessary.
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5 43
5 44
5 45 _____
5 45 KEITH A. KREIMAN
5 46 SF 520.202 82
5 47 rh/es/7569